

Notice of Allowability

Application No.

10/066,109

Examiner

Thuy N. Pardo

Applicant(s)

MCNEIL, DANIEL D.

Art Unit

2165

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Appeal Brief filed on May 07, 2007.
2. ☒ The allowed claim(s) is/are 1-4 and 9-16, now renumbered 1-12.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

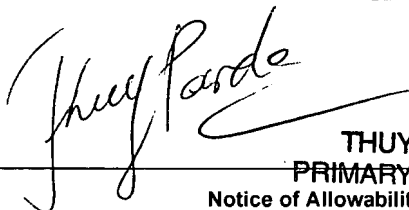
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____



THUY PARDO
PRIMARY EXAMINER

EXAMINER'S AMENDMENT

1. Applicant's Appeal Brief filed on May 07, 2007 has been reviewed.
2. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the Issue Fee.
3. Authorization for this Examiner's Amendment was given in a telephonic interview with Ms. Jeanette S. Harms, Reg. No. 35,537, on July 16, 2007.
4. The application has been amended as follows:

Claim 1,

line 8, "and" has been deleted,

line 14, after "backup", --"; and determining whether a system clock has been changed,

wherein if the system clock has been changed, then returning to performing the
full image backup on the plurality of data blocks, and

wherein if the system clock has not been changed, then performing one of:

initiating the incremental backup at the predetermined interval; and

comparing the modification time of each file/folder at the predetermined interval
to the defined time-- has been added.

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Claims 5-8 and 17-20 have been canceled.

Claim 13,

line 8, "and" has been deleted,

line 13, after "the incremental backup", --"; and determining whether a system clock has been changed,

wherein if the system clock has been changed, then returning to performing the full image backup on the plurality of data blocks, and

wherein if the system clock has not been changed, then performing one of:

initiating the incremental backup at the predetermined interval; and

comparing the modification time of each file/folder at the predetermined interval to the defined time-- has been added.

Allowable Subject Matter

5. Claims 1-4 and 9-16 are allowed over the prior art of record.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record fails to teach or suggest individually or in combination and determining whether a system clock has been changed, wherein if the system clock has been changed, then returning to performing the full image backup on the plurality of data blocks, and

wherein if the system clock has not been changed, then performing one of initiating the incremental backup at the predetermined interval and comparing the modification time of each file/folder at the predetermined interval to the defined as set forth in independent claims 1 and 13.

Dependent claims 2-4, 9-12 and 14-16 being further limiting to the independent claims 1 and 13, definite and enable by the Specification are also allowed.

The closest prior art, Myers, EP Application No. 0410630A2 teaches scheduling the storage backup of data sets involved in an incremental backup policy sensitive to a pair of adjustable parameters relating to the last backup, last update and current date affecting each data set and its storage group. The closest prior art fails to anticipate or render Applicant's limitations above obvious.

6. Any comments considered necessary by applicant must be submitted no later than the payment of the Issue Fee and, to avoid processing delays, should preferably accompany the Issue Fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy N. Pardo whose telephone number is 571-272-4082. The examiner can normally be reached on Mon-Fri.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on 571-272-4146. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

July 21, 2007

A handwritten signature in black ink, appearing to read 'Thuy Pardo', with a stylized flourish at the end.

THUY PARDO
PRIMARY EXAMINER